



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Oxford Medical Inc.

File: B-224256

Date: October 8, 1986

DIGEST

Oral complaint to the contracting agency that awardee's offer does not meet specifications did not constitute a protest to the agency since oral protests are no longer provided for under the Federal Acquisition Regulations. Therefore, a subsequent written protest filed with the contracting agency more than 10 working days after the basis of the protest was known is untimely. Since the protest was not initially timely protested to procuring agency, later protest to the General Accounting Office is untimely.

DECISION

Oxford Medical, Inc. (Oxford), protests the award of a contract to Del Mar Avionics (Del Mar) under request for proposals (RFP) DADA09-86-R-0044, issued by the Department of the Army for medical monitoring equipment. Oxford contends that the Army's award to Del Mar was improper because the equipment Del Mar offered does not meet the RFP mandatory specifications.

We dismiss the protest as untimely without obtaining an agency report because it is clear on its face that the protest is not filed timely, 4 C.F.R. § 21.3(f) (1986).

In its protest, Oxford reports that the contracting officer notified Oxford by letter dated August 7, 1986, received on August 14, that award had been made to Delmar. Upon receipt of the notice of award, Oxford telephoned the contracting officer stating its objections to the award, and was advised that a written protest would have to be filed. Oxford sent a letter of protest dated August 27 from its Florida office to the contracting officer in El Paso, Texas. In its letter, Oxford, apparently repeating its oral complaint, argued that the award was improper because Delmar's equipment did not

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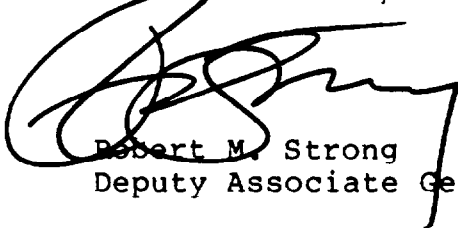
not meet the specifications, that the award should be "rescinded" and that Oxford should receive the award as the only other eligible offeror. The Army responded to Oxford's letter of August 27, by letter of September 17, received by Oxford on September 24. The Army denied Oxford's position that the award was improper. On October 2, Oxford filed its protest with our Office.

Oxford's protest is untimely. Our Bid Protest Regulations require that a protest be filed with the contracting agency, or this Office, not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). If an initial protest was filed timely with the contracting agency, any subsequent protest to this Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Oral protests to contracting agencies, however, are no longer recognized under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.101 (1985); K-II Construction, Inc., B-221661, Mar. 18, 1986, 65 Comp. Gen. ____ (1986), 86-1 C.P.D. ¶ 270. Oxford's oral complaint to the Army on August 14, therefore, did not constitute a protest permitting a subsequent protest to our Office within 10 working days of initial agency adverse action.

Oxford's written protest, to be considered timely under our Bid Protest Regulations, had to be filed by August 28, 10 working days after Oxford's receipt of the Army's letter notifying it of the award. In the absence of any contrary evidence, assuming it was mailed the day it was dated (August 27) and allowing a reasonable time for the letter to reach the Army (we generally estimate 1 calendar week for mail to arrive, See T.S. Head & Associates, Inc., B-220316, Sept. 30, 1985, 85-2 C.P.D. ¶ 368), Oxford's written agency-level protest would not have arrived by August 28.

Thus, Oxford's written protest to the contracting agency was untimely filed. Since Oxford's initial protest to the agency was not timely filed, the subsequent protest to our Office is also untimely and will not be considered. AMI Industries, Inc., B-222561, June 5, 1986, 86-1 C.P.D. ¶ 527. This is the case, notwithstanding that the Army considered Oxford's untimely protest since our timeliness regulations may not be waived by action or inaction of a procuring activity. Ardrox, Inc., B-221241.2, Apr. 30, 1986, 86-1 C.P.D. ¶ 421.

We dismiss the protest.



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